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Attorneys for Plaintiff
INFORMATION APPLIANCE ASSOCIATES

FILED
2008 AUG 29 AM 8:33
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY g DEPUTY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INFORMATION APPLIANCE ASSOCIATES,
a California Corporation,

Plaintiff,

-v-

STEVEN SCHWEIGER, an individual,

Defendant.

'08 CV 1585 JM LSP

Case No. _____

COMPLAINT FOR
BREACH OF CONTRACT

Plaintiff Information Appliance Associates ("IAA"), by and through its undersigned attorneys, alleges as follows:

PARTIES

1. Plaintiff IAA is a California corporation with its principal place of business in the State of California, County and City of San Diego. IAA is engaged in developing and selling computer software and peripherals.

2. Defendant Steven Schweiger ("Schweiger") is an individual who resides in and is a citizen of the State of New York.

JURISDICTION AND VENUE

3. This is an action for breach of a Mutual Nondisclosure Agreement ("NDA") by a citizen of the State of California against a citizen of the State of New York, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1332(a).

4. This Court has personal jurisdiction over Defendant because Defendant has consented to such jurisdiction in the NDA.

5. Venue is proper in this District because the NDA provides for jurisdiction and venue of any controversy under the agreement in this Judicial District.

COUNT I (Breach of Contract)

6. IAA realleges and incorporates by reference the allegations set forth in paragraphs 1 through 5 above as if fully set forth herein.

7. On or about June 13, 2008, Defendant obtained from IAA pre-release software ("Software") that was being tested by IAA. In connection with, and in consideration for, obtaining this test software, Defendant executed a valid Mutual Nondisclosure Agreement ("NDA"). A true and correct copy of the NDA is attached hereto and made a part hereof as Exhibit A.

8. The NDA provides that both parties must keep all information learned in connection with the Software strictly confidential. Specifically, each party to the NDA agreed to keep in confidence all Confidential Information, as defined in the NDA, and to not directly or indirectly disclose, publish or make available to any third party, use for its own benefit or the benefit of any person or entity other than the disclosing party, or use for any purpose other than the Project, any Confidential Information it received from the disclosing party.

9. On or about July 2, 2008, Defendant disclosed Confidential Information about the Software to a third party, without privilege, license or consent, in direct violation of the NDA.

10. As a result of Defendant's breach of his obligation to maintain the confidentiality of information concerning the Software under the NDA, IAA has suffered harm in the nature of loss of good will and reputation, and damages in the nature of economic loss in an amount to be determined at trial, but in no event less than \$75,000, and it has been forced to expend attorneys' fees and costs.

11. Defendant's breach of the NDA has resulted in irreparable harm to Plaintiff, for which there is no adequate remedy at law, and, unless Defendant is enjoined from any further unauthorized use and disclosure of Confidential Information subject to the NDA, in violation of the NDA, Plaintiff will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

PRAYER

WHEREFORE, Plaintiff Information Appliance Associates prays that the Court enter judgment against Defendant, as follows:

- (1) A declaration that Defendant has breached the NDA and has caused Plaintiff Information Appliance Associates to suffer harm resulting from his breach of the NDA;
- (2) Damages, in an amount to be determined at trial, but in no event less than \$75,000;
- (3) A preliminary and permanent injunction enjoining Defendant from disclosing any further Confidential Information under the NDA to any third party;
- (3) Attorney's fees, costs of suit, pre-judgment and post-judgment interest; and
- (4) For such other and further relief as this Court deems equitable and proper.

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1 Dated: August 27, 2008

SAUL EWING LLP

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4 Henry A. Platt
5 Attorney for Plaintiff
6 Information Appliance Associates
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EXHIBIT A TO COMPLAINT

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this "Agreement") is made by and between Information Appliance Associates, a California corporation ("Company"), and Steven Schweiger ("Client") effective as of the 13th day of June 2008.

In consideration for the parties' agreement to participate in the activities described below, the parties agree:

1. Confidential Information. In connection with discussions between Company and Client concerning a potential association or business arrangement (the "Project"), either party may find it beneficial to disclose to the other party certain information in tangible or intangible form that the disclosing party considers to be proprietary and/or confidential (hereinafter referred to as "Confidential Information"), which may include, but is not limited to, trade secrets, inventions, discoveries, ideas, patentable works, concepts, know-how, techniques, processes, designs, specifications, drawings, diagrams, data, computer programs, business plans, business activities and operations, reports, studies and other technical and business information. Confidential Information shall also include descriptions of the existence or progress of the above-described Project.

2. Protection of Confidential Information. Each party acknowledges that the other party claims its Confidential Information as a special, valuable and unique asset. For itself and on behalf of its officers, directors, agents, employees, and affiliates, the receiving party agrees that it shall:

(a) keep in confidence all Confidential Information, and not directly or indirectly disclose, publish or make available to any third party, use for its own benefit or the benefit of any person or entity other than the disclosing party, or use for any purpose other than the Project, any Confidential Information it receives from the disclosing party;

(b) restrict disclosure of the Confidential Information solely to the minimum number of employees necessary in order to complete the Project and only to those employees who have executed written confidentiality or nondisclosure agreements with the receiving party;

(c) not reverse engineer the Confidential Information for any purpose whatsoever, and

(d) use reasonable care to protect the Confidential Information, and in no event use less than the same degree of care to protect the Confidential Information as it would employ with respect to its own information of like importance which it does not desire to have published or disseminated.

3. Limitations on Confidential Information. The obligations of Section 2 shall not apply to disclosed information which:

(a) The receiving party knows at the time of disclosure, free of any obligation to keep it confidential, as evidenced by written records;

(b) Is or becomes publicly available through authorized disclosure; or

(c) The receiving party rightfully obtains from a third party who has the right to transfer or disclose it.

If any portion of any Confidential Information falls within any of the above exceptions, the remainder of the Confidential Information shall continue to be subject to the requirements of this Agreement.

4. Compelled Disclosure. If the receiving party faces legal action to disclose Confidential Information received under this Agreement, then the receiving party shall promptly notify the disclosing party and, upon the disclosing party's request, shall cooperate with the disclosing party in contesting such a disclosure.

5. Return of Confidential Information. All information furnished under this Agreement, whether in written, electronic or other format, shall remain the disclosing party's property and shall be returned to it or destroyed promptly at its request together with all copies, extracts, plans, schematics or other reproductions in whole or in part made of such information by the receiving party. All documents, memoranda, discs, tapes, notes and other writings whatsoever prepared by the receiving party based on Confidential Information shall be destroyed upon the disclosing party's request and such destruction shall be certified in writing to the disclosing party by an authorized officer of the receiving party.

6. No License. Except as expressly set forth in this Agreement, no license under any patents, copyrights, mask rights, trademarks or other proprietary rights is granted or conveyed by one party's transmittal of Confidential Information or other information to the other party under this Agreement, nor shall such a transmission constitute any representation, warranty, assurance, guaranty or inducement by the disclosing party to the receiving party with respect to infringement of patent or other rights of others.

7. No Warranty. The receiving party acknowledges that the disclosing party has not made and will not make any representation or warranty as to the accuracy or completeness of its Confidential Information or of any other information provided in connection with the Project, and the receiving party agrees that the disclosing party shall have no liability resulting from the use of the Confidential Information or such other information.

8. No Commitment. Confidential Information provided to one party does not and is not intended to represent a commitment by the disclosing party to enter into any business relationship with the receiving party or with any other person or entity or to grant any equity or other interest in the disclosing party or the Confidential Information to the receiving party or any other person or entity. If the parties desire to pursue business opportunities, the parties will execute a separate written agreement to govern such business relationship.

9. Equitable Relief. Each party acknowledges that its breach of this Agreement will result in immediate and irreparable harm to the disclosing party, for which there will be no

adequate remedy at law, and the disclosing party shall be entitled to equitable relief to compel the receiving party to cease and desist all unauthorized use and disclosure of the Confidential Information.

10. Notices. All notices under this Agreement shall be deemed to have been duly given upon the mailing of the notice, postpaid, or upon the facsimile transmission, to the party entitled to such notice at the address and facsimile number set forth below.

11. Export Regulations. Notwithstanding any other provision of this Agreement, neither party shall export or re-export any technical Confidential Information acquired under this Agreement or any commodities using such Confidential Information to any country to which the United States government forbids export or, at the time of export, requires an export license or approval, without first obtaining such license or approval.

12. Effective Date and Termination. This Agreement shall be effective as of the date first written above and shall continue for three (3) years following the return of all Confidential Information in accordance with Paragraph 5 above and shall apply to discussions taking place on or before or during the period following the effective date.

13. No Waiver; Severability. The failure of any party to require performance by another party of any provision of this Agreement shall in no way affect the full right to require such performance at any time thereafter. Should any provisions of this Agreement be found unenforceable, the remainder shall still be in effect.

14. Entire Agreement. This Agreement embodies the entire understanding between the parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Agreement. This Agreement shall not be modified except by a writing duly executed on behalf of the party against whom such modification is sought to be enforced.

15. Assignment and Binding Effect. Neither party may assign this Agreement without the other party's prior written consent, and any assignment in violation of this Agreement shall be void. This Agreement shall benefit and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

16. Construction of Agreement. This Agreement has been negotiated by the parties and the language of this Agreement shall not be construed for or against either party.

17. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The California state courts of San Diego County (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of California) shall have exclusive jurisdiction and venue over any dispute arising out of or relating to this Agreement, and each party hereby consents to the jurisdiction and venue of such courts.

18. Counterparts. Either the original or copies, including facsimile transmissions, of this Agreement, may be executed in counterparts, each of which shall be an original as against

any party whose signature appears on such counterpart and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute and deliver this Agreement.

Information/Appliance Associates

By 

Print Name: Terence Goggin

Title: President

Address: 511 Juniper Street
San Diego, CA 92101

RECIPIENT

By (signature) 

Print Name: Steve Schweiger

Title: _____

Address: 207 E. 4th Street
New York, NY 10009

Email Address: steve@shurbuilt.com

Fax No. 212.777.4321

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Information Appliance Associates

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Henry A. Platt, Saul Ewing LLP, 2600 Virginia Ave., NW, Suite 1000
Washington, D.C. 20037, (202) 333-8800

DEFENDANTS

2008 AUG 29 AM 8:33
Steven Schweiger
207 E. 4th Street, New York, NY 10009

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
BY Unknown AND INVOLVED.

08 CV 1585 JM LSP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec. 1332

Brief description of cause:
Breach of Mutual Nondisclosure Agreement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/27/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

15432

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE

08/29/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154532 - MB

**August 29, 2008
08:35:18**

Civ Fil Non-Pris

USAO #: 08CV1585 CIVIL FILING

Judge.: JEFFREY T MILLER

Amount.: \$350.00 CK

Check#: BC2392

Total-> \$350.00

FROM: INFORMATION APPLICANCE ASSOC
VS STEVEN SCHWEIGER